

Response to the USTR U.S. – EU High Level Working Group on Jobs and Growth

Addressing ACMDs – The Development of a Metric

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This submission is made by the International Roundtable for Trade and Competition Policy, Inc., which is a not-for-profit foundation established in 1997, dedicated to ensuring a better understanding of trade and competition issues by governments around the world. Its focus is on the interplay between competition, trade and domestic regulation, advancing the notion of consumer welfare enhancement as being the ultimate objective of trade and competition policies.

In responding to the call for comments in relation to the USTR’s notice about the U.S. – EU High Level Working Group on Jobs and Growth, which was asked to identify policies and measures to increase U.S. – EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness, it is vital to understand the nature of the problem presented.

Anti-competitive market distortions (“ACMDs”) reduce and often entirely eradicate the benefits to consumer welfare gained by trade liberalization. ACMDs tend to nullify and impair the benefits that countries grant through trade liberalization, but often present difficult trade cases, because they frequently do not necessarily implicate national treatment and MFN rules. These distortions occur in the form of discriminatory government regulations, which might be intended to protect national champions. They severely injure both global and local economies. Accordingly, ACMDs must be dealt with in order to ensure global supply chain competition that enhances welfare and creates wealth. As long as ACMDs are allowed to proliferate without any real sanction, they represent a serious threat to the global economy. It will be imperative to find a global economic architecture that works to eliminate ACMDs, so that the resultant level playing field encourages efficiency and innovation, leading to expanded global GDP.

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In order to properly deal with ACMDs, which are the primary threat in the development of the global economy, we need to work towards a mutually agreed metric to measure their negative effect on markets. The proposed approach is the development of a metric to estimate the net welfare costs of the ACMDs. Such a metric could help build the case for the dismantling of these restraints, or their replacement by less costly means for benefiting favored constituencies. Although any metric is bound to be imprecise in application, it should be possible to produce “rough and ready” estimates of the social costs of ACMDs through this exercise. In order to be most effective, this metric depends on an as accurate as possible determination of the ACMDs, which will be a highly complex endeavor reaching far beyond what has been done to date in this area, although we note the work that has been done by the OECD.² In addition to their measurement from a welfare standpoint, work should be done on how these welfare impacts correlate with trade flows, subject to the caveat below.

Historically, analysis of behind the border trade barriers, or regulatory protection has focused on the impact of these barriers on trade flows. However, we suggest that this metric does not properly evaluate the true impact of ACMDs. While it clearly measures the impact of the barrier on external trade, it does not properly measure the true impact of the ACMD under scrutiny on the domestic economy in the country where the ACMD exists. A better measure is a welfare-based metric based on the implications of the measure on consumer plus producer surplus, or some other agreed measure of social welfare. The type of analysis would be a standard partial equilibrium analysis where the ACMD itself would act as an external shock and the reduction in welfare occasioned by this shock could be measured. The estimate would not need to be exact – it could be stated as a rough estimate, plus or minus a certain percentage (error tolerance). Such an approach could add credibility by recognizing imperfections in estimation and limitations on knowledge, while at the same time highlighting the real harm to domestic interests flowing from the ACMD.

² OECD Competition Assessment Toolkit, Volume 1 – Competition Assessment Principles 2011, available at <http://www.oecd.org/dataoecd/52/6/46193173.pdf> (last visited February 3, 2012); OECD Competition Assessment Toolkit, Volume 2 – Competition Assessment Guidance 2011, available <http://www.oecd.org/dataoecd/17/33/45544507.pdf> (last visited February 3, 2012).

While we believe that these ideas are commendable, only when real study is undertaken in this area will we be able to translate them into a product that could then inform policy. We submit that the Working Group, in its effort to identify policies and measures to increase economic growth and competition, should consider one of its projects to be a study on ACMDs with the goal of developing a metric along the lines that we have described above.